

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MARTINA MORALES-RIOS,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

Case No. 3:22-cv-00270-MMD-CSD

ORDER

I. SUMMARY

Plaintiff Martina Morales-Rios sued Defendant Wal-Mart Stores, Inc. for injuries she sustained during a slip-and-fall incident at a Reno Wal-Mart store. (ECF No. 1-2.) Before the Court is Defendant's Motion for Partial Summary Judgment (ECF No. 26 ("Motion"))¹ for (1) medical expenses related to Plaintiff's paraspinal abscess, and (2) medical expenses related to Plaintiff's hospital visit for an acute urinary tract infection ("UTI") and high blood sugar. The Court will deny the Motion as to the paraspinal abscess because there are genuine issues of material fact as to causation. The Court will grant the Motion as to the UTI/high blood sugar because there is no genuine dispute that these medical issues are unrelated to and not caused by the slip-and-fall.

II. BACKGROUND²

On May 10, 2020, Plaintiff slipped on some liquid on the floor of a Walmart store in Reno and sustained injuries. (ECF Nos. 26 at 3, 33 at 4.) As a result of this slip-and-fall, Plaintiff suffered a "concussion and experienced cervical and lumbar spine pain, upper and lower extremity pain, as well as hip pain." (ECF No. 33 at 4.) Because Plaintiff failed to respond to more conservative treatment methods, Plaintiff received an

¹Plaintiff filed a response (ECF No. 33), and Defendant filed a reply (ECF No. 35).

²The following facts are undisputed unless noted otherwise.

1 interlaminar epidural steroid injection on August 31, 2020. (*Id.*) Plaintiff was subsequently
 2 hospitalized at Renown Medical Center on October 31, 2020, due to a paraspinal abscess
 3 she developed from the injection, which had to be drained by a radiologist. (*Id.*) She was
 4 hospitalized from October 31, 2020, to November 23, 2020, and had a post-op
 5 appointment on December 5, 2020. (ECF No. 26 at 3.) Plaintiff also visited the Renown
 6 emergency room on October 14, 2020, for treatment of a UTI and high blood sugar. (*Id.*)

7 Plaintiff asserts a single claim for negligence. (ECF No. 1-2.) Defendant seeks
 8 summary judgment as to causation on the (1) \$116,189.25 in medical expenses for
 9 Plaintiff's hospitalization for her paraspinal abscess, and the (2) \$7,355.25 in medical
 10 expenses for Plaintiff's hospital visit for her UTI and high blood sugar. (ECF No. 26 at 3,
 11 13.)

12 **III. DISCUSSION**

13 The Court will deny the Motion as to Plaintiff's paraspinal abscess and will grant
 14 the Motion as to Plaintiff's UTI/high blood sugar.³

15 **A. Paraspinal Abscess**

16 Defendant argues that summary judgment is appropriate for Plaintiff's paraspinal
 17 abscess because the lumbar-spine injection Plaintiff received was an intervening act that
 18 caused the abscess and severed the chain of causation. (ECF No. 26 at 3.) Plaintiff
 19 counters that the abscess is still causally related to the slip-and-fall because she had to
 20 get the injection to treat her injuries from the incident. (ECF Nos. 33 at 6, 9.) The Court
 21 agrees with Plaintiff.

22 Drawing all inferences in the light most favorable to Plaintiff, the Court finds that

23
 24 ³A claim for negligence in Nevada requires that the plaintiff satisfy four elements:
 25 (1) an existing duty of care, (2) breach, (3) legal causation, and (4) damages." *Turner v.*
 26 *Mandalay Sports Entm't, LLC*, 180 P.3d 1172, 1175 (Nev. 2008). "Causation has two
 27 components: actual cause and proximate cause." *Clark Cnty. Sch. Dist. v. Payo*, 403 P.3d
 28 1270, 1279 (Nev. 2017) (citation omitted). "An accident occurring on the premises does
 not of itself establish negligence." *Sprague v. Lucky Stores, Inc.*, 849 P.2d 320, 322 (Ne.
 1993) (citation omitted). "Yet, a business owes its patrons a duty to keep the premises in
 a reasonably safe condition for use." *Id.* (citation omitted). To establish entitlement to
 summary judgment for negligence, "defendant need only negate one element of plaintiff's
 case (*i.e.*, duty, breach, causation, or damages)." *Harrington v. Syufy Enters.*, 931 P.2d
 1378, 1380 (Nev. 1997) (citation omitted).

genuine issues remain as to proximate causation for Plaintiff's paraspinal abscess. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986) (citation omitted). As support for its argument, Defendant primarily relies on a report by Plaintiff's expert, Dr. Sep Bady, who opined that "it would be unlikely that [Plaintiff] would have developed an iliopsoas abscess absent the lumbar injection." (ECF No. 26-20 at 24.) However, in that same report, Dr. Bady also opined that the lumbar injection and hospitalization were "directly related to the subject incident." (*Id.*) This is because Plaintiff only received the injection due to her "worsening low back pain and radicular symptoms" caused by the slip and fall "that did not respond to chiropractic treatments and oral medications." (*Id.*)

Since medical complications are common in slip-and-fall incidents, particularly given the seriousness and extent of Plaintiff's injuries, a reasonable factfinder could conclude that the abscess was a natural and probable consequence of Defendant's negligence, and that the botched injection was a foreseeable cause of the injury. (ECF No. 33 at 4.) See *Clark Cnty. Sch. Dist. v. Payo*, 403 P.3d 1270, 1279 (Nev. 2017) (explaining that "[p]roximate cause is defined as any cause which in natural [foreseeable] and continuous sequence unbroken by any efficient intervening cause, produces the injury complained of and without which the result would not have occurred") (citations and quotation marks omitted); *Huffey v. Phelps*, 281 P.3d 1183 (Nev. 2009) (noting that "[t]o establish proximate causation, the injury must appear to be the natural and probable consequence of the negligence, and it ought to have been foreseen in light of the attending circumstances") (citation omitted); *Vallery v. State*, 46 P.3d 66, 78 (Nev. 2002) (explaining that an intervening cause "means not a concurrent and contributing cause but a superseding cause which is itself the natural and logical cause of the harm . . . [a]n act can only be a superseding cause if it is unforeseeable") (citations omitted).

Moreover, the Nevada Supreme Court has repeatedly emphasized that the issue of proximate causation is a factual issue to be determined by the trier of fact. See *Nehls v. Leonard*, 630 P.2d 258, 260 (Nev. 1981) (citations omitted); *Frances v. Plaza Pac.*

1 *Equities, Inc.*, 847 P.2d 722, 724 (Nev. 1993) (citations omitted); *Yamaha Motor Co.*,
 2 *U.S.A. v. Arnoult*, 955 P.2d 661, 665 (Nev. 1998) (citation omitted). Given that summary
 3 judgment on causation is disfavored and genuine disputes of material fact remain as to
 4 whether Defendant proximately caused Plaintiff's abscess, the Court denies Defendant's
 5 Motion on this issue. *See Anderson*, 477 U.S. at 256.

6 The Court also denies Defendant's alternative request⁴ for Fed. R. Civ. P. 56(g)
 7 relief⁵ because, as explained above, whether Defendant caused Plaintiff's abscess and
 8 hospitalization is genuinely in dispute. (ECF No. 26 at 17.) *See* Fed. R. Civ. P. 56(g)
 9 advisory committee's note to 2010 amendment (explaining that "the court may decide
 10 whether to apply the summary-judgment standard to dispose of a material fact that is not
 11 genuinely in dispute").

12 **B. UTI/High Blood Sugar**

13 Defendant contends that summary judgment is proper for Plaintiff's UTI/high blood
 14 sugar hospital visit because her injuries were the result of her failure to take her diabetes
 15 medication, not the result of the slip-and-fall. (*Id.* at 16.) Because Plaintiff fails to address
 16 Defendant's argument in her response, the Court finds that there is no genuine dispute
 17 that the UTI/high blood sugar were not caused by the slip-and-fall incident.⁶ (ECF No.
 18 33.)

19 Defendant has satisfied its initial burden of demonstrating that there is no genuine
 20

21 ⁴In the Motion, Defendant alternatively requests that the Court issue an order
 22 "stating 1) that Plaintiff's \$116,189.25 in medical expenses are causally related to
 23 Plaintiff's paraspinal abscess and 2) that Plaintiff's paraspinal abscess was proximately
 caused by the lumbar injection she had at Tahoe Fracture & Orthopedic Medical Clinic,
 Inc., on August 31, 2020." (ECF No. 26 at 17.)

24 ⁵Rule 56(g) provides that "[i]f the court does not grant all the relief requested by
 25 the motion, it may enter an order stating any material fact — including an item of damages
 26 or other relief — that is not genuinely in dispute and treating the fact as established in the
 case."

27 ⁶In the reply, Defendant contends that the Court should grant the Motion under LR
 28 7-2(d) because Plaintiff failed to address Defendant's argument in her opposition. (ECF
 No. 35 at 3.) The Court disagrees, because LR 7-2(d) explicitly excludes "a motion under
 Fed. R. Civ. P. 56."

1 dispute Plaintiff's UTI and high blood sugar were not caused by the slip-and-fall. See
 2 *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). As support, Defendant
 3 points to Plaintiff's own medical records, which clearly and unambiguously show that her
 4 UTI/high blood sugar were caused by her chronic non-compliance with her diabetes
 5 medication. (ECF No. 26 at 7, 16.) The physician's notes from the visit states that
 6 Plaintiff's hyperglycemia "appears to be related to noncompliance" with her medication
 7 and "[h]er sugar is also likely elevated because she has a urinary tract infection." (ECF
 8 No. 26-18 at 6.) Specifically, the provider notes that Plaintiff was supposed to be on her
 9 diabetes medication, Metformin, but had not taken her medication for over a year. (*Id.* at
 10 2, 6.) Plaintiff's other doctor, Javier Rodriguez, similarly disclosed that Plaintiff had a
 11 "history of uncontrolled Type 2 diabetes" and a "history of lack of adherence," where she
 12 stopped taking Metformin for four years. (ECF No. 26-20 at 9.) Hence, Defendant has
 13 met its initial burden of showing that there is no dispute Plaintiff's UTI/high blood sugar
 14 were caused by her failure to take her diabetes medication—not the slip-and-fall. See *id.*

15 However, Plaintiff fails to address Defendant's argument in her response, and has
 16 therefore failed to resist the Motion by "set[ting] forth specific facts showing that there is
 17 a genuine issue for trial." (ECF No. 33.) *Anderson*, 477 U.S. at 256. Accordingly, the Court
 18 grants Defendant's Motion as to Plaintiff's UTI/high blood sugar hospital visit. Plaintiff is
 19 therefore precluded from seeking damages related to the October 14, 2020, hospital visit.
 20 The Court also denies Plaintiff's request for Rule 56(d)⁷ relief because her request is
 21 limited to her paraspinal abscess,⁸ and she does not explain what the additional discovery
 22 would elicit for the UTI/high blood sugar issue. (*Id.* at 10.) See *InteliClear, LLC v. ETC*
 23 *Glob. Holdings, Inc.*, 978 F.3d 653, 662 (9th Cir. 2020) (explaining that "[t]o prevail on a
 24 request for additional discovery under Rule 56(d), a party must show that: (1) it has set

25
 26 ⁷Rule 56(d) provides that "[i]f a nonmovant shows by affidavit or declaration that,
 27 for specified reasons, it cannot present facts essential to justify its opposition, the court
 28 may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or
 declarations or to take discovery; or (3) issue any other appropriate order."

⁸In her response, Plaintiff only requests Rule 56(d) relief "to demonstrate how [her]
 paraspinal abscess is causally related to the subject incident." (ECF No. 33 at 10.)

1 forth in affidavit form the specific facts it hopes to elicit from further discovery; (2) the facts
2 sought exist; and (3) the sought-after facts are essential to oppose summary judgment")
3 (citation and quotation marks omitted).

4 **IV. CONCLUSION**

5 The Court notes that the parties made several arguments and cited to several
6 cases not discussed above. The Court has reviewed these arguments and cases and
7 determines that they do not warrant discussion as they do not affect the outcome of the
8 issues before the Court.

9 It is therefore ordered that Defendant's motion for partial summary judgment (ECF
10 No. 26) is granted in part and denied in part, as stated herein.

11 It is further ordered that under LR 16-5, the Court finds that it is appropriate to refer
12 this case to Judge Craig S. Denney to conduct a settlement conference. If the parties do
13 not settle, the Joint Pretrial Order is due within 30 days of the date that the settlement
14 conference is held.

15 DATED THIS 18th Day of July 2023.

16
17 
18 _____
19 MIRANDA M. DU
20 CHIEF UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27
28